

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2005-005553

01/13/2010

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT

D. Galligan

Deputy

IN RE THE MATTER OF
CLAIRE D ROUGE

CLAIRE D ROUGE
16 EAGLE CREST DR
CHESTER NH 03056

AND

JEAN-BERNHARD CHARLES ROUGE

JEAN-BERNHARD CHARLES ROUGE
8222 E ORANGE BLOSSOM LN
SCOTTSDALE AZ 85250

CONCILIATION SERVICES-NE
DOCKET - NE
FAMILY COURT SERVICES-CCC

MINUTE ENTRY

Courtroom 107- Northeast Regional Court Center

Prior to the commencement of this hearing Petitioner, Claire D. Rouge and Respondent, Jean-Bernhard Charles Rouge, are sworn. Petitioner's exhibits 1 through 8 are marked for identification.

1:33 p.m. This is the time set for Evidentiary Hearing. Petitioner is present on her own behalf. Respondent is present on his own behalf.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

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The parties are advised that this matter was reassigned to this Division, and this is the first hearing that has been set before this Division. The parties are further advised that the Court has received numerous motions and pleadings in this case.

The Court notes that Mother filed a Petition to Modify Custody, Parenting Time and Child Support and Father filed a Counter-Petition Requesting an Award of Sole Custody. Therefore, the Court shall set an evidentiary hearing on both parties Petitions.

The Court is advised that the parties attended mediation through Conciliation Services to try and resolve the issues of custody and parenting time, but could not reach any agreements.

On the Court's own motion,

IT IS ORDERED the parties shall participate in a Parenting Conference and (interviews of their minor children if necessary). The parties will be advised by separate minute entry of the name and telephone number of the Parenting Conference Provider and other relevant information regarding the Parenting Conference. The parties shall comply with all instructions and directives issued by the Provider.

IT IS FURTHER ORDERED that immediately following this hearing each party is directed to pay the \$300 per party fee at the Clerk of the Court filing counter. Forms to request a fee deferral are available at the filing counter.

WARNING

IF YOU FAIL TO APPEAR AT THE PARENTING CONFERENCE AS ORDERED, YOU MAY BE REQUIRED TO PAY A \$100 NO SHOW FEE. IF YOU CANNOT ATTEND, YOU MUST REQUEST AND BE GRANTED PERMISSION FROM THE JUDGE IN YOUR CASE TO RESCHEDULE THE CONFERENCE AT LEAST THREE FULL COURT DAYS BEFORE THE CONFERENCE. IF AN AGREEMENT IS REACHED PRIOR TO YOUR APPOINTMENT DATE, YOU MUST SUBMIT A REQUEST TO THE JUDGE TO VACATE THE CONFERENCE AND WAIVE THE FEE IN ORDER TO AVOID FEE COLLECTION.

With respect to Mother's Motion to Order Dispute Assessment or Custody Evaluation which relates to Mother's Petition to Modify Custody filed August 11, 2009, the Court finds that this Motion was denied by Judge Miles on September 15, 2009.

The Court has before it the following pleadings and/or motions all of which were filed on August 12 2009:

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- Petitioner's Motion to Enforce a Court Order from February 5, 2009: Educational Expenses;
- Petitioner's Motion to Enforce a Court Order from February 5, 2008: Negative, Disparaging, or Derogatory Comments;
- Petitioner's Motion to Enforce a Court Order from February 5, 2009: Child Support;
- Petitioner's Motion to Enforce Previous Ruling i.e. 2007 federal tax exemptions

The Court finds that Judge Miles modified child support effective January 1, 2009, which would have affected and clarified which parent was entitled to claim the minor children for the federal tax exemptions.

Petitioner advises the Court that she filed a Motion to Produce Documents on September 3, 2009.

LET THE RECORD REFLECT that this Division has not received such a document from Mother, nor does the Court's docket contain such a document. Thus, the Court takes no action on that document.

The Court proceeds with the Evidentiary Hearing at this time, regarding the issues of educational expenses from 2007 through 2008, tax deductions, unpaid child support and Mother's Motion regarding negative disparaging or derogatory comments.

Petitioner invokes the Rule of Exclusion of Witnesses and all witnesses present for this matter are admonished by the Court and leave the courtroom.

Jean-Bernhard Rouge testifies.

Petitioner's exhibit 2 is received in evidence.

Petitioner's exhibit 5 is received in evidence.

With respect to the federal tax exemption applicable to the parties' children, the Court finds that Father took the deduction for both children in 2007. Therefore,

~~IT IS ORDERED that Mother may claim both children for the federal tax exemptions applicable to the parties' children for the tax year 2009.~~ (See below)

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After further discussion with the parties, the Court finds that based on Father claiming the children on his federal tax exemption for 2007, Mother also claimed both children for the same tax year. Therefore,

IT IS ORDERED that Father must file an amended tax return for the tax year of 2007 without Sophie as a dependant and provide a copy to Mother.

IT IS ORDERED striking the order above that Mother may claim both children for the federal tax exemptions for 2009.

IT IS FURTHER ORDERED that if there is any financial consequences to Father's incorrect taking of the federal tax exemptions applicable to the parties' children in 2007, Father shall bear all costs for both parties.

LET THE RECORD REFLECT that Mother advises the Court that she did not pay any attorneys fees regarding the filing of her Motion to Enforce Previous Ruling i.e. 2007 federal tax exemptions and withdraws her request.

LET THE RECORD FURTHER REFLECT that Mother further advises the Court that she is withdrawing her request to be provided a copy of Father's 2008 tax return. Therefore,

This resolves all the issues raised in Mother's Motion to Enforce Previous Ruling i.e. 2007 federal tax exemptions filed August 12, 2009.

With respect to Petitioner's Motion to Enforce a Court Order from February 5, 2009: Educational Expenses,

The Court finds that Judge Miles found that as of February 2008, there was an arrearage owed for unpaid educational expenses in the amount of \$6,850.00. Mother is requesting that the Court enforce the order for Father to pay his share in the amount of \$3,425, even though she has not paid her share of the outstanding debt. The Court further finds that both parents owe unpaid educational expenses to the school plus interest as previously ordered by Judge Miles.

IT IS ORDERED affirming Judge Miles order that both parties shall be responsible for their 1/2 share of the \$6,850 debt owing to the International School of Arizona, along with the accruing interest.

This resolves the issue raised in Petitioner's Motion to Enforce a Court Order from February 5, 2009: Educational Expenses filed August 12, 2009.

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With respect to Petitioner's Motion to Enforce a Court Order from February 5, 2008: Negative, Disparaging, or Derogatory Comments,

The Court finds that both parents are seeking an award of sole custody of the minor children at this time and the parties are advised that disparaging or derogatory comments made by either parent is one of the factors in A.R.S. §25-403 that the Court must consider when the Court has its hearing on the issue of modification of custody. Therefore,

IT IS ORDERED that each parent shall encourage love and respect between the children and the other parent and neither shall do anything that may undermine the other parent's relationship with the children.

IT IS FURTHER ORDERED that neither parent shall make disparaging comments to the other parent or about the other parent to or in the presence of the minor children, nor shall either parent involve the minor children or disclose to them the details of this litigation.

This resolves all issues raised in Petitioner's Motion to Enforce a Court Order from February 5, 2008: Negative, Disparaging, or Derogatory Comments filed August 12, 2009.

The remaining issue is Petitioner's Motion to Enforce a Court Order from February 5, 2009: Child Support,

The Court has reviewed and considered the Case Status Report prepared by the Family Court Conference Center regarding arrearages. The Court finds that the arrearages in the Case Status Report are for the time period of October 1, 2005 through October 31, 2009. The Court further finds that Father was ordered to pay child support to Mother in the amount of \$700.00 per month, effective August 31, 2005 to January 31, 2008. As of February 1, 2008, Father was ordered to pay child support to Mother in the amount of \$600.00. Thereafter, Judge Miles changed the order for Mother to pay Father in the amount of \$524.22 per month, effective January 1, 2009.

~~The Court finds that Mother is agreeing that for the months of August through December, Father does not owe child support and she is not seeking repayment for those months. The Court further finds that each parent is obligated to pay child support. Father was previously ordered to pay child support for the time period of September 1, 2005 through August 15, 2008, after Father became primary residential parent, Mother had the obligation to pay child support to Father for the time period of August 16, 2008 through December 31, 2008, even though there was not a child support order in place, the Court finds that it is appropriate for Father to be given credit for 4 1/2 months for his child support arrears. Accordingly,~~

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~~The Court Finds that Respondent/Father owes child support arrearages in the amount of \$2,831.66 for the period of September 1, 2005 through August 15, 2008, not including interest. The Court further finds that Petitioner/Mother owes child support arrearages in the amount of \$1,179 for the period of August 16, 2008 through October of 2009, not including interest. Which leaves a balance that Father owes child support arrearages in the amount of \$1,652.66 for the period of September 1, 2005 through December 31, 2009.~~

~~IT IS ORDERED entering judgment against Respondent/Father and in favor of Petitioner/Mother in the amount of \$1,817.66, for the period of September 1, 2005 through December 31, 2009 in the principal amount of \$1,652.66 and interest in the amount of \$165.00. (See below)~~

3:10 p.m. Court stands at recess.

4:30 p.m. Court reconvenes with the parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court finds that on September 16, 2009, Mother was ordered to pay child support to Father in the amount of \$524.22 beginning January 1, 2009 but did not start paying child support to Father until the Order of Assignment went into effect in October of 2009.

After reconsidering the credit given to Father above for the 4 1/2 months for his child support arrears, the Court finds that in Judge Miles minute entry dated September 16, 2009, she considered Father's request for the credit and stated the following:

As set forth in the Child Support Order, Mother shall pay child support to Father in the sum of \$524.22 per month commencing January 1, 2009. Because Mother voluntarily left the children in the care of Father when she moved to New Hampshire in or about August 2008, the Court finds good cause to start Mother's obligation as of January 1, 2009 (the first of the month following the filing of Father's Petition) notwithstanding the fact that Mother did not have notice of Father's Petition until some months later.

Based thereon,

The Court finds that Father owed Mother child support in the amount of \$2,531.66. The Court will not grant any offset to Father for the time period of half of August through December, 2008. Judge Miles previously considered that request and this Court will not grant that reduction to Father. Therefore,

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IT IS ORDERED entering judgment against Respondent/Father and in favor of Petitioner/Mother in the amount of \$2,784.66, for the period of September 1, 2005 through December 31, 2009 in the principal amount of \$2,531.66 and interest in the amount of \$253.00.

The Court finds that Mother has not paid child support to Father for the period of January 1, 2009 through September 30, 2009 and owes Father child support arrears in the amount of \$4,716.00. The Court further finds the Father owes Mother child support arrears in the amount of \$2,784.66 as stated above. The difference between the two figures is \$1,931.34 that Mother owes Father for child support arrears.

IT IS ORDERED entering judgment against Petitioner/Mother and in favor of Respondent/Father in the amount of \$1,931.34, with interest accruing at the legal rate.

IT IS FURTHER ORDERED affirming the previous child support order for Mother to pay Father in the amount of \$524.22. In light of the history of the case, the Court will allow Mother to make the arrearage payment as she is able, but interest will still accrue at the legal rate until paid in full.

As to Mother's Request for an Award of Attorneys Fees,

Discussion ensues between the Court and parties regarding the request for attorney fees.

Petitioner makes an avowal to the Court that during the time that she was represented by an attorney, no request had ever been made for an award of attorney's fees.

Arguments are presented to the Court.

Based on the testimony presented,

IT IS ORDERED taking the request for an award of attorney fees under advisement.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED releasing all exhibits not offered in evidence to the party causing them to be marked.

ISSUED: Exhibit Release Form (1)

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With respect to each parties Petitions to Modify Custody, Parenting Time and Child Support,

IT IS ORDERED setting Evidentiary Hearing to the Court on **April 20, 2010 at 9:00 a.m. (3 hours allotted)** in this Division at:

Maricopa County Superior Court
Northeast Regional Court Center
18380 N. 40th Street
Courtroom 107
Phoenix, Arizona 85032

Pursuant to Rule 77(C)(5), Arizona Rules of Family Law Procedure, each party will be allowed 1/2 of the available time to present all direct, cross, redirect examination and any argument. The parties are expected to complete the hearing in the allotted time, and the time will not be extended absent a Motion granted by the Court and filed no later than 20 days prior to the hearing. Such a Motion shall set forth good cause to extend the time and specifically include a list of each and every witness who will testify, and an estimate of the time and subject matter of the expected testimony of each witness.

IT IS FURTHER ORDERED with regard to discovery and disclosure requirements:

1. Both parties shall exchange updated disclosure statements required by Rule 49, Arizona Rules of Family Law Procedure, including an exchange of all relevant information, documents and exhibits, and a list of all witnesses who will testify and the subject matter of the expected testimony of each witness, no later than 30 days prior to the Hearing.
2. All depositions and discovery contemplated by Rules 51 through 65, Arizona Rules of Family Law Procedure, shall be completed and any motions regarding discovery shall be filed no later than 20 days prior to the Hearing.
3. Counsel and both parties shall personally meet, face to face, at least ten (10) days prior to the Hearing (unless both parties are unrepresented and there has been domestic violence between them) to conduct settlement discussions, prepare a Joint Pre-hearing Statement, and discuss the resolution and narrowing of all procedural and substantive issues in this case.
4. The parties shall promptly comply with all requests for relevant information in this case. In this regard, the parties shall sign all necessary consents and releases reasonably required to obtain any relevant documents or records from any financial institution, company, business, medical or health care provider or employer possessing any relevant information.

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IT IS FURTHER ORDERED that the parties shall file and provide this Division with a copy of a Joint Pre-hearing Statement pursuant to Rule 6.8, Local Rules of Practice--Maricopa County (Family Court Cases), no later than 5 days prior to the hearing, unless both parties are unrepresented and there has been domestic violence between them. If the parties are unrepresented and there has been domestic violence between them, they shall file separate Pre-hearing Statements.

IT IS FURTHER ORDERED that the Pre-hearing Statement shall include the following attachments:

1. If child support, spousal maintenance and/or attorneys' fees are at issue, a current Affidavit of Financial Information completed by each party, together with a written statement as to whether the parties stipulate that the affidavits of both parties may be considered as evidence by the court as if marked as exhibits and entered into evidence pursuant to In Re Marriage of Kells, 182 Ariz. 480, 897 P.2d 1366 (App. 1995).
2. If child support is at issue, a current Parent's Worksheet for Child Support Amount completed by each party pursuant to the Statewide Child Support Guidelines.
3. If there are disputed custody, access or visitation issues, a specific proposal for custody and visitation by each party.

IT IS FURTHER ORDERED that the failure of counsel or any party to appear at the time of hearing, or to timely present the Pre-hearing Statement in proper form, including each and every attachment required, shall, in the absence of good cause shown, result in the imposition of any and all available sanctions pursuant to Rule 71(A), Arizona Rules of Family Law Procedure and Local Rule 6.2(e), including proceeding to hear this matter by default based upon the evidence presented by the appearing party.

IT IS FURTHER ORDERED that, if the parties have more than 5 exhibits to be marked, arrangements shall be made with the Clerk of this Division at least five (5) days prior to trial to schedule a time to deliver said exhibits to the Clerk. The parties shall present the Clerk with their exhibits in consecutive, numerical order; Petitioner's exhibits shall begin with exhibit 1 and Respondent's exhibits shall continue in consecutive, numerical order thereafter. All exhibits must be presented to the Clerk for marking; a space will not be held for an exhibit that is listed on an Exhibit List, but omitted from the set delivered to the Clerk. Duplicate exhibits shall not be presented. The parties shall also provide the Court and the adverse party with a separate copy of all exhibits.

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IT IS FURTHER ORDERED that the parties shall indicate in the Pre-hearing Statement which exhibits they have agreed will be admissible at hearing as well as any specific objections that will be made to any exhibit if offered at hearing which is not agreed to be admitted. Reserving all objections to the time of hearing will not be permitted. At the time of hearing, all exhibits that the parties have agreed will be admitted and all exhibits for which no specific objection is stated in the Pre-hearing Statement shall be summarily admitted.

Counsel and the parties are reminded of their obligation to give prompt notice of any settlement to the Court as required by Rule 70, Arizona Rules of Family Law Procedure.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure (ARFLP).

/ s / HONORABLE RUTH H. HILLIARD

JUDGE OF THE SUPERIOR COURT

4:45 p.m. Matter concludes.

LATER:

As to Mother's request for an award of attorney's fees,

IT IS ORDERED denying Mother's request for an award of attorney's fees.

This resolves all issues raised in Petitioner's Motion to Enforce a Court Order from February 5, 2009: Child Support filed August 12, 2009.